

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MILTON DEJESUS BONES	:	CRIMINAL
	:	
v.	:	
	:	
UNITED STATES OF AMERICA	:	NO. 79-61

MEMORANDUM AND ORDER

AND NOW, this 26^h day of February, 2013, upon consideration of the *pro se* petition for writ of error *coram nobis* filed by Milton DeJesus Bones (Doc. No. 29), the court makes the following findings and conclusions:¹

1. On January 31, 2013, Bones filed the instant *pro se* petition for a writ of *coram nobis* in which he challenges the “continuing consequences” of a constitutionally invalid conviction. Although it is difficult to fully understand Bones’ argument, he appears to argue that the federal sentence from his 1979 criminal case was enhanced by a state court guilty plea which had been entered approximately 10 years earlier. Bones contends that pursuant to *Padilla v. Kentucky*, 559 U.S. 356 (2010), his attorney’s failure to advise him of potential future sentence enhancement for a subsequent conviction resulting from his guilty plea constituted a violation of his Sixth Amendment right to counsel. He also contends that he would not have pled guilty if he had been correctly advised by counsel.

2. The writ of error *coram nobis* “provides a way to collaterally attack a criminal conviction for a person . . . who is no longer ‘in custody’ and therefore cannot seek habeas relief.”² *Chaidez v. United States*, __U.S. __, 2013 WL 610201 (Feb. 20, 2013). In the instant petition, Bones alleges that he is no longer imprisoned pursuant to

¹It plainly appears from the petition that Bones fails to state a claim upon which relief may be granted. As a result, I did not order an answer from Respondents as it would have unnecessarily delayed the judicial process. Accordingly, the facts and procedural history recited herein are derived exclusively from Bones petition for writ of *coram nobis*.

²United States District Courts have jurisdiction to entertain petitions for *habeas corpus* relief only from persons who are “in custody” in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. §§ 2241(c), 2254(a), 2255(a).

his 1979 federal conviction despite the fact that he is currently incarcerated at the Allenwood Federal Correctional Complex. Moreover, he fails to provide any pertinent information regarding the state and federal convictions referenced in his petition. As a result, Bones custody status is unclear and there is insufficient evidence to determine if a petition for writ of *coram nobis* is the appropriate vehicle for his claims.

3. Ultimately, however, it is unnecessary for Bones to amend his petition to clarify his claims because his fundamental argument, that he is entitled to relief pursuant to *Padilla v. Kentucky*, supra, is meritless. The Supreme Court has held that defendants whose convictions became final prior to *Padilla* cannot benefit from its holding. *Chaidez*, 2013 WL 610201, at *10. Because Bones conviction became final prior to 2010, any claim he would make based on the retroactive application of *Padilla* must be denied.

Based upon the foregoing, it is hereby **ORDERED** that Milton DeJesus Bones' *pro se* petition for writ of error *coram nobis* (Doc. No. 29) is **DENIED**.³

/s J. William Ditter, Jr.

J. WILLIAM DITTER, JR., J

³No certificate of appealability is necessary upon the denial of this petition for a writ of *coram nobis*. *United States v. Baptiste*, 223 F.3d 188, 189, n.1 (3d Cir. 2000).